Supreme Court, U.S.
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No. 99-759

IN THE

Supreme Court of the United States

LILLIAN HUCKABY ROACH,

Petitioner,

v.

JAMES EVERETT ROACH,

Respondent.

ON PETITON FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE STATE OF GEORGIA

RESPONDENT'S BRIEF IN OPPOSITION

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TABLE OF CONTENTS

	Page
Table of Cited Authorities	ii
Opinions Below	1
Statement of Jurisdiction	1
Statement of the Case	2
Reasons for Denying the Writ	4
I. The Supreme Court Of Georgia Properly Denied Petitioner's Writ Of Certiorari And Georgia Court Of Appeals Properly Reviewed And Decided The Appeal Below.	4
A. The Court of Appeals of Georgia properly affirmed the trial court grant of summary judgment based on the record presented.	4
B. Petitioner was not denied property rights under the Fourteenth Amendment through denial of her appeal by the Court of Appeals of Georgia or denial of her Writ of certiorari to the Supreme Court of Georgia.	5
Conclusion	7

TABLE OF CITED AUTHORITIES

Page

Cases:

Brown v. Franchiser, 247 Ga. 463, 277 S.E.2d 16 (1981) 4

Drummond v. Gladson, 219 Ga. App. 521, 465 S.E.2d 87 (1995) 4

Jordan v. Johnson, 223 Ga. App. 875, 479 S.E.2d 175 (1996) 4, 5

Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982) 5, 6

United States Constitution:

Amendment XIV 1, 7

OPINIONS BELOW

Petitioner failed to note all opinions issued below and mischaracterized the rulings on her Second Motion for Reconsideration to the Supreme Court of Georgia. On February 11, 1998, Petitioner moved for reconsideration of the trial court's grant of summary judgment dated January 14, 1999. The motion was briefed by both parties and denied by order dated March 11, 1998. Petitioner's Second Motion for Reconsideration to the Supreme Court of Georgia was not denied. It was ordered not filed because the Georgia rules do not provide for the filing of the second motion. Therefore, the Second Motion for Reconsideration submitted by Petitioner was not considered by the Supreme Court of Georgia. Petitioner failed to submit her first Motion for Reconsideration with her Petition for Writ of Certiorari. Petitioner's first Motion for Reconsideration did not argue that Petitioner was deprived of her property interest without due process of law in violation of United States Constitution Amendment XIV.

STATEMENT OF JURISDICTION

Petitioner did not present below issues of federal constitutional law to be determined. The orders below are based upon well-established principals of Georgia law governing causes of action created by Georgia law. Therefore, the Court should deny the Petition for Certiorari since no federal question has ever been raised.

STATEMENT OF THE CASE

Petitioner Lillian Huckaby Roach (hereinafter referred to as Petitioner) filed her action on April 18, 1994, against Respondent James Everett Roach (hereinafter referred to as "Respondent"). Petitioner's complaint contained the following counts: Count I requested a declaratory judgment regarding the property of the probate estate of James Austin Roach (the father of Respondent hereinafter referred to as Mr. Roach) and equitable distribution of marital assets. Count II set forth a cause of action for tortious interference with the marital relationship and contract. Count III set forth a cause of action for slander. Count IV set forth a cause of action for fraud. Count V set forth a cause of action for conversion of property. Count VI set forth a cause of action for diversion of property. Count VII requested equitable relief. Count VIII requested punitive damages. Count IX requested attorney fees and costs. Neither Count I, VII, VIII nor IX set forth independent causes of action. The counts merely defined the relief or damages Petitioner sought. Petitioner brought her action in her individual capacity against Respondent personally. Respondent filed a motion for summary judgment as to Petitioner's cause of action for interference with the marital relationship and contract on November 4, 1994. Respondent filed a motion for summary judgment as to Petitioner's cause of action for conversion, diversion, and fraud on May 26, 1995. Respondent filed a motion for summary judgment as to Petitioner's cause of action for slander on July 26, 1995. In each motion, Respondent requested all allegations and relief requested which related to the subject matter of the motions be dismissed and stricken from Petitioner's Complaint.

The parties presented extensive briefs, evidence, and arguments on all legal and factual issues arising from Petitioner's complaint to the court. On May 17, 1995, the trial court granted Respondent summary judgment as to Petitioner's cause of action for interference with the marital relationship and contract. On January 14, 1998, the trial court granted summary judgment to Respondent on all remaining counts of Petitioner's complaint. The parties orally argued the motions for summary judgment before the trial court on May 1, 1995, April 1, 1996 and April 7, 1997, and Petitioner's request for equitable relief and declaratory judgments on April 21, 1994, October 7, 1996, and April 2, 1997. The order entered by the trial court clearly stated it was based upon the entire record.

In February 1998, Petitioner moved to set aside the January 14, 1998, grant of summary judgment to Respondent. Respondent responded by brief to Petitioner's motion. On March 11, 1998, the trial court denied Petitioner's motion to set aside. Petitioner then pursued her appeal through the Court of Appeals of Georgia. To her detriment, Petitioner presented a limited record to the Court of Appeals. Respondent's responsive brief to the Court of Appeals of Georgia clearly stated the legal and factual basis entitling Respondent to summary judgment.

The Court of Appeals of Georgia affirmed the trial court decision on March 2, 1999. The Court of Appeals of Georgia denied Petitioner's motion for reconsideration on March 30, 1999. Petitioner filed a Writ of Certiorari to the Supreme Court of Georgia which was denied on July 2, 1999. Petitioner moved for reconsideration on or about July 16, 1999 which was denied on July 30, 1999. Petitioner moved again for reconsideration on August 9, 1999 which was not permitted filed.

REASONS FOR DENYING THE WRIT

I.

THE SUPREME COURT OF GEORGIA PROPERLY DENIED PETITIONER'S WRIT OF CERTIORARI AND GEORGIA COURT OF APPEALS PROPERLY REVIEWED AND DECIDED THE APPEAL BELOW.

A. The Court of Appeals of Georgia properly affirmed the trial court grant of summary judgment based on the record presented.

Petitioner, at her own peril, chose to submit a small fraction of the trial court record. The trial court's decision clearly stated it was based upon the entire record. Based upon the entire record, Respondent was entitled to summary judgment as to all counts. Petitioner's choice resembles that of the appellant in *Brown v. Franchiser,* 247 Ga. 463, 277 S.E.2d 16 (1981). In *Brown,* the defendant established that no issue of material fact existed. *Id.* at 463. The plaintiff then failed to rebut and show a genuine issue of material fact existed. *Id.* at 463. On appeal, the plaintiff omitted parts of the record upon which the trial court based its decision. *Id.* at 464. In doing so, the plaintiff failed to establish error. In *Brown*, the Supreme Court of Georgia emphatically states and warns appellants that it is not the function of the appellate court or the appellee to prosecute an appeal on the appellant's behalf. *Id.* at 465, *see also Drummond v. Gladson*, 219 Ga. App. 521, 523, 465 S.E.2d 87 (1995). The holding specifically states, "the Petitioner must include in the record those items which will enable the appellate court to ascertain whether a genuine issue of material facts remains . . ." *Id.* at 464, *see also Jordan v. Johnson*, 223 Ga. App. 875,

479 S.E.2d 175 (1996). Petitioner did not choose to include all of the evidence, briefs and memoranda presented to the trial court on the motions for summary judgment or motion to set aside the grant of summary judgment. Therefore, Petitioner by her own action failed to present her appeal in a proper form to the Court of Appeals of Georgia.

B. Petitioner was not denied property rights under the Fourteenth Amendment through denial of her appeal by the Court of Appeals of Georgia or denial of her Writ of certiorari to the Supreme Court of Georgia.

Petitioner mistakenly relies upon *Logan v. Zimmerman Brush Co.* to claim a deprivation of property rights under the Fourteenth Amendment of the United States Constitution. As Justice Blackmum summarized:

> the issue in [*Logan*] is whether a State may terminate a complainant's cause of action because a state official, for reasons beyond the complaint's control, failed to comply with a statutorily mandated procedure. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 at 424 (1982).

In this case, Petitioner pursued her cause of action. As shown above, the trial court afforded Petitioner ample due process to present her cause of action. In this case, the state did not terminate Petitioner's cause of action for failure to comply with a mandated procedural time limit. Although permitted years to develop her causes of action, Petitioner failed to meet the legal burdens required to defeat Respondent's motions for summary judgment. On appeal,

Petitioner, not the state, chose to omit the majority of the record upon which the trial court relied to grant the motion for summary judgment. The state statute and appellate rules permitted Petitioner to present the entire record for appeal. Petitioner's acts, not the courts of Georgia or Respondent, precluded the continuance of her cause of action.

In *Logan*, the Court cautions:

> Obviously, nothing we have said entitles every civil litigant to a hearing on the merits in every case. The State may erect reasonable procedural requirements for triggering the right to an adjudication. . . . And the State certainly accords due process when it terminates a claim for failure to comply with a reasonable procedural or evidentiary rule. *Logan* at 437.

In this case, Respondent's motions for summary judgment were granted based upon traditional principals of law. The Court of Appeal of Georgia reasonably expects appellants to present the record upon which the trial court's decision was based and reasonably denies appeals when the record is not so presented. Therefore, Petitioner has not been denied a property right without due process of law.

CONCLUSION

Based upon the foregoing argument and citation of authority by Respondent, Petitioner's Petition for Writ of Certiorari should be denied. The action between the parties involved matters of state law and remedies under state law. The state of Georgia accorded Petitioner ample due process. Since 1994, Petitioner has aggressively presented her causes of action. However, Petitioner did not raise federal constitutional issues until her improper second motion for reconsideration to the Supreme Court of Georgia. As in her appeal, Petitioner's own acts denied the Supreme Court of Georgia the opportunity to consider the federal issues. The Supreme Court of Georgia properly denied Petitioner's Writ of Certiorari and first Motion for Reconsideration. The Court of Appeals of Georgia properly affirmed the trial court's grant of summary judgment. Petitioner has not been deprived by the State of Georgia of her property in violation of the Fourteenth Amendment of the Constitution of the United States. Wherefore, Respondent prays that the Petition for Writ of Certiorari will be denied.

Respectfully submitted,

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